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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **Orlando Garcia,**

17 Plaintiff,

18 v.

19 **JBSTELEGRAPH LLC, a California**
20 Limited Liability Company

21 Defendants.

22 **Case No.**

23 **Complaint For Damages And**
24 **Injunctive Relief For Violations**
25 **Of: Americans With Disabilities**
26 **Act; Unruh Civil Rights Act**

27 Plaintiff Orlando Garcia complains of JBSTELEGRAPH LLC, a
28 California Limited Liability Company; and alleges as follows:

29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. Plaintiff
32 suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk.
33 He uses a wheelchair for mobility.

34 2. Defendant JBSTELEGRAPH LLC owned the real property located at or
35 about 4679 Telegraph Ave, Oakland, California, upon which the business
36 "Bleu Honey Beauty Bar" operates, in May 2021.

37 3. Defendant JBSTELEGRAPH LLC owns the real property located at or

1 about 4679 Telegraph Ave, Oakland, California, upon which the business
2 "Bleu Honey Beauty Bar" operates, currently.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein is
8 responsible in some capacity for the events herein alleged, or is a necessary
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
10 the true names, capacities, connections, and responsibilities of the Defendants
11 are ascertained.

12

13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to Bleu Honey Beauty Bar in May 2021 with the intention
27 to avail himself of its goods or services motivated in part to determine if the
28 defendants comply with the disability access laws. Not only did Plaintiff

1 personally encounter the unlawful barriers in May 2021, but he wanted to
2 return and patronize the business several times but was specifically deterred
3 due to his actual personal knowledge of the barriers gleaned from his
4 encounter with them.

5 9. Bleu Honey Beauty Bar is a facility open to the public, a place of public
6 accommodation, and a business establishment.

7 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
8 to provide wheelchair accessible paths of travel in conformance with the ADA
9 Standards as it relates to wheelchair users like the plaintiff.

10 11. Bleu Honey Beauty Bar provides paths of travel to its customers but fails
11 to provide any wheelchair accessible paths of travel.

12 12. A couple of problems that plaintiff encountered was that the ramp that
13 runs up to the entrance did not have a level landing. What is more, the ramp
14 had a slope of about 12.4%.

15 13. Plaintiff believes that there are other features of the paths of travel that
16 likely fail to comply with the ADA Standards and seeks to have fully compliant
17 paths of travel available for wheelchair users.

18 14. On information and belief, the defendants currently fail to provide
19 wheelchair accessible paths of travel.

20 15. Additionally, on the date of the plaintiff's visit, the defendants failed to
21 provide accessible door hardware in conformance with the ADA Standards as
22 it relates to persons like the plaintiff.

23 16. Bleu Honey Beauty Bar provides door hardware to its customers but
24 fails to provide accessible door hardware.

25 17. A problem that plaintiff encountered was that the entrance door
26 hardware had a pull bar style handle that required tight grasping to operate.

27 18. Plaintiff believes that there are other features of the door hardware that
28 likely fail to comply with the ADA Standards and seeks to have fully compliant

1 door hardware.

2 19. On information and belief, the defendants currently fail to provide
3 accessible door hardware.

4 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
5 personally encountered these barriers.

6 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
7 wheelchair accessible facilities. By failing to provide accessible facilities, the
8 defendants denied the plaintiff full and equal access.

9 22. The failure to provide accessible facilities created difficulty and
10 discomfort for the Plaintiff.

11 23. The defendants have failed to maintain in working and useable
12 conditions those features required to provide ready access to persons with
13 disabilities.

14 24. The barriers identified above are easily removed without much
15 difficulty or expense. They are the types of barriers identified by the
16 Department of Justice as presumably readily achievable to remove and, in fact,
17 these barriers are readily achievable to remove. Moreover, there are numerous
18 alternative accommodations that could be made to provide a greater level of
19 access if complete removal were not achievable.

20 25. Plaintiff will return to Bleu Honey Beauty Bar to avail himself of its
21 goods or services and to determine compliance with the disability access laws
22 once it is represented to him that Bleu Honey Beauty Bar and its facilities are
23 accessible. Plaintiff is currently deterred from doing so because of his
24 knowledge of the existing barriers and his uncertainty about the existence of
25 yet other barriers on the site. If the barriers are not removed, the plaintiff will
26 face unlawful and discriminatory barriers again.

27 26. Given the obvious and blatant nature of the barriers and violations
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will
 2 amend the complaint, to provide proper notice regarding the scope of this
 3 lawsuit, once he conducts a site inspection. However, please be on notice that
 4 the plaintiff seeks to have all barriers related to his disability remedied. See
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his
 7 disability removed regardless of whether he personally encountered them).

8

**9 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 10 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 13 again herein, the allegations contained in all prior paragraphs of this
 14 complaint.

15 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 16 privileges, advantages, accommodations, facilities, goods and services of any
 17 place of public accommodation is offered on a full and equal basis by anyone
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 19 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,
 or procedures, when such modifications are necessary to afford
 goods, services, facilities, privileges, advantages, or
 accommodations to individuals with disabilities, unless the
 accommodation would work a fundamental alteration of those
 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 21 b. A failure to remove architectural barriers where such removal is
 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 defined by reference to the ADA Standards.

1 c. A failure to make alterations in such a manner that, to the
2 maximum extent feasible, the altered portions of the facility are
3 readily accessible to and usable by individuals with disabilities,
4 including individuals who use wheelchairs or to ensure that, to the
5 maximum extent feasible, the path of travel to the altered area and
6 the bathrooms, telephones, and drinking fountains serving the
7 altered area, are readily accessible to and usable by individuals
8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 29. When a business provides paths of travel, it must provide accessible
10 paths of travel.

11 30. Here, accessible paths of travel have not been provided in conformance
12 with the ADA Standards.

13 31. When a business provides door hardware, it must provide accessible
14 door hardware.

15 32. Here, accessible door hardware has not been provided in conformance
16 with the ADA Standards.

17 33. The Safe Harbor provisions of the 2010 Standards are not applicable
18 here because the conditions challenged in this lawsuit do not comply with the
19 1991 Standards.

20 34. A public accommodation must maintain in operable working condition
21 those features of its facilities and equipment that are required to be readily
22 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

23 35. Here, the failure to ensure that the accessible facilities were available
24 and ready to be used by the plaintiff is a violation of the law.

25
26 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
27 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
28 Code § 51-53.)

1 36. Plaintiff repleads and incorporates by reference, as if fully set forth
2 again herein, the allegations contained in all prior paragraphs of this
3 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
4 that persons with disabilities are entitled to full and equal accommodations,
5 advantages, facilities, privileges, or services in all business establishment of
6 every kind whatsoever within the jurisdiction of the State of California. Cal.
7 Civ. Code §51(b).

8 37. The Unruh Act provides that a violation of the ADA is a violation of the
9 Unruh Act. Cal. Civ. Code, § 51(f).

10 38. Defendants’ acts and omissions, as herein alleged, have violated the
11 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
12 rights to full and equal use of the accommodations, advantages, facilities,
13 privileges, or services offered.

14 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
15 discomfort or embarrassment for the plaintiff, the defendants are also each
16 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
17 (c).)

18

19 **PRAYER:**

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. For injunctive relief, compelling Defendants to comply with the
23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
24 plaintiff is not invoking section 55 of the California Civil Code and is not
25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. For equitable nominal damages for violation of the ADA. See
27 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
28 and any other equitable relief the Court sees fit to grant.

1 3. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: June 24, 2021

CENTER FOR DISABILITY ACCESS

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8 By: _____

9 Amanda Seabock, Esq.
10 Attorney for plaintiff

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